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ENVIRONMENTAL
HEARINGS OFFICE

BEFORE THE FOREST PRACTICES APPEALS BOARD

STATE OF WASHINGTON

RATNA, ROY, DAVID J. CAPERS,)
CATHERINE MC NUFF, HELEN)
FICALORA and ROBERT FICALORA,)

Appellant,)

NO. 95-4

v.)

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

STATE OF WASHINGTON)
DEPARTMENT OF NATURAL)
RESOURCES, and HAUKEWELL LAND)
COMPANY,)

Respondents.)

THIS MATTER came on before the Honorable William A. Harrison,
Administrative Appeals Judge, presiding, and Board Members Robert
E. Quoidbach, Dr. Martin R. Kaatz and Norman L. Winn.

This is an appeal of an approved forest practices
application.

Appearances were as follows:

1. Shawn T. Newman, Attorney at Law, for appellants.
2. John E. Justice, Assistant Attorney General, for the
Washington State Department of Natural Resources.
3. John J. Sinclair, Attorney at Law, for Hauk-Well.

1 4. Tom Bjorgen, Deputy Prosecutor, for Thurston County.

2 The hearing was held on Friday, January 27, 1995, in
3 courtroom 129, Thurston County Courthouse, Olympia Washington.
4 Court reporting services were provided by Sherry Anderson.

5 Witnesses were sworn and testified. Exhibits were examined.
6 From testimony heard and exhibits examined, the Forest Practices
7 Appeals Board makes these:

8 **FINDINGS OF FACT**

9 **I.**

10 The Department of Natural Resources received a forest
11 practices application from Hauk-Well Land Company on November 15,
12 1994. It proposed a harvest on 10 acres followed by a conversion
13 of the property to a use inconsistent with commercial timber
14 growing.

15 **II.**

16 Because the application proposed a conversion of the property
17 to non-timber use, it was classified as a IV-General requiring
18 review under the State Environmental Protection Act ("SEPA"). The
19 lead agency for purposes of conducting SEPA review was Thurston
20 County.

21 **III.**

22 Thurston County conducted SEPA review and issued a Mitigated
23 Determination of Non-Significance. Following an extended comment
24 period the Department of Natural Resources approved the
25 application with the mitigation conditions attached.

26

1 IV.

2 In addition to the mitigation conditions, Hauk-Well Land
3 Company voluntarily agreed to further conditions on their
4 operations. The conditions are attached as exhibit A.

5 V.

6 Appellants claim additional conditions of approval are
7 necessary based on an agreement entered into by Thurston County
8 and the Parkside Development Company on November 29, 1971. The
9 agreement was incorporated into a Thurston County Ordinance No.
10 4286, that same day. Ordinance No. 4286 amended Ordinance No.
11 3744.

12 VI.

13 Parkside Development Company no longer owns the subject
14 property. It is owned by Hauk-Well Land Company.

15 VII.

16 The portion of the agreement relevant to forest practices is
17 Statement No. 6, which requires natural screening and landscaping
18 along the periphery of the site and preservation of as many
19 existing trees as possible.

20 VIII.

21 Neither the Department of Natural Resources nor the County
22 incorporated any element of the agreement, including No. 6, into
23 the approved application.

24 IX.

25 Thurston County enacted two subsequent zoning ordinances
26 covering this property. One in 1974 and another 1980. The 1980

1 ordinance expressly repealed "Ordinance No. 3744 and as thereafter
2 amended."

3 X.

4 Appellants challenged the veracity of the SEPA checklist, but
5 did not challenge the final SEPA determination issued by the
6 County.

7 XI.

8 Any Conclusion of Law deemed to be a Finding of Fact is
9 hereby adopted as such.

10 From these Findings of Fact, the Board issues these:

11 **CONCLUSIONS OF LAW**

12 I.

13 The central issue in this case is the applicability of the
14 1971 agreement. If Ordinance No. 4286 is valid then the agreement
15 which is incorporated into the ordinance would be applicable. If
16 the Ordinance No. 4286 is invalid then the agreement is not
17 applicable.

18 II.

19 If the agreement were applicable via county ordinance, the
20 Board would remand the application for incorporation of relevant
21 portions of the agreement into the approved application.

22 III.

23 The Board does not have the authority to determine the
24 validity of County ordinances. However, the Board has concluded
25 it can determine the probable validity of a County ordinance in
26 the course of a forest practices appeal.

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IV.

Based on the subsequent zoning ordinances enacted by Thurston County, the validity of Ordinance No. 4286 is doubtful and thus, the 1971 agreement is not applicable.

V.

Hauk-Well will amend their application to incorporate the voluntary conditions attached as Exhibit A. As amended, the application is affirmed.

VI.

Appellant's challenge to the SEPA checklist is without merit.

VII.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

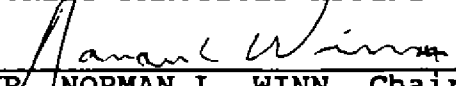
From the foregoing, the Board issues this:

ORDER

The application is remanded to the Department of Natural Resources for addition of the voluntary conditions set out in Exhibit A. As amended, the application's approval is affirmed.

DONE this 14th day of February, 1995.


THE HONORABLE WILLIAM A. HARRISON
FOREST PRACTICES APPEALS BOARD


MR. NORMAN L. WINN, Chair


DR. MARTIN R. KAATZ, Member

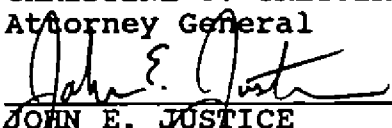

MR. ROBERT QUOIDBACH, Member

EXHIBIT A

In addition to the conditions of the MDNS, following are measures that the applicant has agreed to voluntarily implement to further offset the affects of the forest practice:

1. Along the western border of the property (adjacent to Cooper's Glen Apartments) the applicant will leave a strip generally 50 feet in width, but will remove approximately 29 merchantable trees. The majority of the vegetation within the 50-foot strip will remain intact.
2. Snag trees along the southern boundary of the site, with confirmed evidence of pileated woodpecker use will be preserved. These have been brightly flagged by county staff.
3. Deciduous trees will not be cut except for some smaller diameter trees that hinder logging operations.
4. Logging trucks will not enter or leave the site during usual school bus arrival and departure times for elementary students. The restricted time frames are:
 - ▶ Between 8:15 a.m. and 8:40 a.m.
 - ▶ Between 2:45 p.m. and 4:00 p.m.

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FINAL FINDINGS OF FACT,
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ORDER FPAB NO. 95-4 - 6

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